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No. 90-1065

Supreme Court, U.S.

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IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1990

RANDALL REAM,

*Petitioner,*

v.

STATE OF INDIANA,

*Respondent.*

**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF INDIANA**

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## **QUESTION PRESENTED FOR REVIEW**

Whether the male Petitioner, convicted of molesting two nine-year-old boys, was denied his constitutional right to present evidence on his own behalf when the trial court excluded as irrelevant his expert psychiatric evidence that he exhibited no latent or overt homosexual or pedophilic tendencies.

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Respondent, State of Indiana, respectfully urges the Court to deny the petition for a writ of certiorari to review the decision of the Court of Appeals of Indiana in cause no. 76A03-8903-CR-71.

## **OPINION BELOW**

The unpublished opinion of the Third District of the Court of Appeals is reproduced in the Petitioner's appendix.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. United States Constitution, Amendment VI.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. United States Constitution, Amendment XIV, § 1.

## **STATEMENT OF THE CASE**

Nine-year-olds Todd Honaker and Tony Snell attended Calvary Church Camp in Angola, Indiana in the summer of 1987. The Petitioner was one of the counselors assigned to the boys' cabin. Twice the Petitioner climbed into Todd's bed, removed Todd's underwear, and fondled Todd's genitals. On the last night of the boys' four-day stay,

the Petitioner fondled Tony's genitals through his underwear and placed Tony's hand on his (Petitioner's) erect penis.

## REASONS FOR DENIAL OF THE WRIT

The petition should be denied because the decision by the Indiana Court of Appeals rests on adequate non-federal grounds.

While Petitioner did partially base his argument before the Court of Appeals on the Sixth and Fourteenth Amendments, the Court of Appeals decided the issue without reference to those constitutional underpinnings. In such a situation, this Court will determine whether Indiana's non-federal, State ground independently and adequately supports the judgment. *Staub v. Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); *Wood v. Chesborough*, 228 U.S. 672, 676-80, 33 S.Ct. 706, 57 L.Ed.18 (1913). While the Court of Appeals' silence regarding the constitutional question is not conclusive, if the non-federal ground is adequate the Court will decline review. *Chicago, B & Q.R. Co. v. Illinois ex rel. Com'rs*, 200 U.S. 561, 580-81, 26 S.Ct. 341, 50 L.Ed. 596 (1906).

The decision of the Court of Appeals rests upon an independent and adequate State ground. The Court of Appeals affirmed the exclusion on the basis of two evidentiary rules of general application in Indiana: that character evidence is not admissible to prove that a person acted in a manner consistent with that characteristic on a particular occasion; and that character evidence is limited to a person's reputation for truth and veracity, or peace and quietude. The Court of Appeals envisioned a real probability that the disadvantages sought to be prevented by the rules

would develop: that the prejudice, distraction, and time consumption would outweigh the probative value of the evidence. The Court of Appeals saw this occurring in the form of a "battle of experts", resulting in excessive court time and cost to the parties, and focusing the trial on the side issue of the reliability of the expert opinions rather than on whether the Petitioner committed the acts.

According to the standards articulated by this Court to evaluate the independence and adequacy of the State ground, the basis of the Court of Appeals' decision justifies denial of the writ.

First, the Court's reliance on the general rules governing character evidence was necessary and logically connected to the ultimate decision, was against the position of the Petitioner who claimed the constitutional right, and was broad enough to deny the claim and sustain the trial court ruling without reference to the federal ground. *Eustis v. Bolles*, 150 U.S. 361, 370, 14 S.Ct. 131, 37 L.Ed. 1111 (1893); *Murdock v. Memphis*, 20 Wall. 590, 636, 87 U.S. 590, 22 L.Ed. 429 (1874).

Second, the constitutional claim is not so interwoven with the State ground as not to be an independent matter; here the State ground is entirely independent. *Enterprise Irrigation Dist. v. Farmers' Mut. Canal Co.*, 243 U.S. 157, 164, 37 S.Ct. 318, 61 L.Ed. 644 (1917).

Finally, the State ground relied upon by the Court of Appeals is certainly tenable. *Lawrence v. St. Tax Comm'n*, 286 U.S. 276, 282, 52 S.Ct. 556, 76 L.Ed. 1102 (1932); *Ward v. Love Co.*, 253 U.S. 17, 22, 40 S.Ct. 419, 64 L.Ed. 751 (1920); *Enterprise*, 243 U.S. at 164.

## CONCLUSION

The State of Indiana, as Respondent, respectfully urges that the petition for a writ of certiorari be denied.

Respectfully submitted,

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